

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH K. DAUKSAVAGE,

Plaintiff,

vs.

FRIEDA HULKA et al.,

Defendants.

3:15-cv-00319-RCJ-WGC

ORDER

This is a prisoner civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff sued two Defendants in this Court for violations of his Fourteenth Amendment rights based on deliberate indifference to his serious medical needs. The Court dismissed the Complaint upon screening, finding that it essentially alleged medical malpractice. Plaintiff has appealed, and the Court of Appeals has referred the case to the Court to determine whether *in forma pauperis* status should continue on appeal.

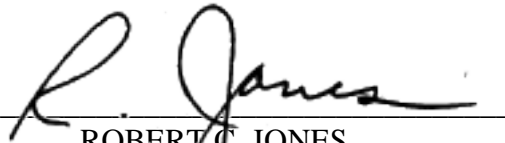
The Court finds that *in forma pauperis* status should not continue on appeal, as the appeal is frivolous. *See* 28 U.S.C. § 1915(a)(3). The claim sounds in medical malpractice, not cruel and unusual punishment. “[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. It does not become a constitutional violation merely because the victim is a prisoner.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

CONCLUSION

IT IS HEREBY ORDERED that *in forma pauperis* status shall not continue on appeal.

IT IS SO ORDERED.

DATED: This 8th day of March, 2016.



ROBERT C. JONES
United States District Judge